

pectin extract to the beverage. The Examiner's position during the telephone interview was that the prior art "Home Brew" beers could be provided with extra hop pectin simply by adding extra hops during the brewing process. In response, it is pointed out that this would necessarily also add extra bittering and aroma agents and that the beverage of the present invention is provided with extra hop pectin without adding in extra bittering and aroma agents; the present inventors do not add in the corresponding quantities of bittering and aroma agents when they add the purified hop pectin extract. If the prior art "Home Brew" beverages receive the same amount of pectin by adding additional hops, they would also have correspondingly extra bittering and aroma agents which would be measurable. Therefore, the two beers are in fact measurably different, and the invented beer is thus not anticipated by the prior art. The Examiner in the telephone interview agreed that applicant did not have to run a test in connection with this argument. Also, the hypothetical beer that could conceivably contain all the extra pectin of the present invention without the corresponding amount of extra bittering and aroma agents has not been cited by the Examiner; there is no teaching of such a hypothetical beer in the prior art. For a prior art reference to constitute an anticipatory reference it must provide a teaching of the claimed invention; we do not see such a teaching in the prior art. It was agreed during the telephone interview that the Examiner would consider the foregoing arguments.

With regard to paragraph 2 of the Advisory action, it was agreed during the telephone interview that applicant would run additional data points at 1, 10, 20 and 30 gm of pectin per hectoliter. Attached hereto is the Declaration of Alexandra Wijsman, a research employee of the assignee of the present invention. As shown in paragraph 5 of the Declaration, additional data points were run at 1, 5, 10, 15, 20, 25 and 30 gm of pectin per hectoliter beer. Foam stability improvement is shown at all these data points. Thus, the data points agreed to with respect to paragraph 2 of the Advisory action have now been provided.

With regard to paragraph 3 of the Advisory action, it was agreed that applicant would submit a Declaration separately covering the bines, cones and waste. Attached hereto is the Declaration of Albert Doderer, a co-inventor of the present application. In paragraph 3 of the Doderer Declaration is included a table which shows the results of a test wherein hop pectin derived from bines, cones and waste of four different hop varieties was added to a reference pilsner beer. The hop pectin from the bines, cones and waste of all four hop varieties show improvement in foam head stability. With regard to the extraction procedure utilized, it was agreed in the telephone interview that applicant would state that its extraction technique was as set forth in the patent application or give details comparable to this. Accordingly, paragraph 3 of the Wijsman Declaration states that the pectin preparations were

obtained by an extraction procedure performed on residues from a prior CO₂ extraction using the same principles as described in the patent application on page 14, however, modified to take into account industrial size unit operations. Paragraph 3 of the Doderer Declaration states that the pectin preparations were obtained by the extraction procedure described on page 14 of the patent application. Both Declarations also set forth what weight percent of the extract was actual pectin; the Examiner had also asked for this information. It is believed that with submission of this information, all open items in paragraph 3 of the Advisory action have now been satisfied.

Applicant has sought to amend claim 36 by adding the phrase "measurably increased". In paragraph 5 of the Advisory action, the Examiner considers this phrase to be indefinite and possibly new matter. A beverage having measurably increased foam head stability is not new matter; see Table 1 on page 6 of the specification. It is also believed that measurably increased is not indefinite; its meaning is consistent with the teaching in the specification and measuring techniques known to those of ordinary skill in the art.

Now that both Declarations have been submitted, applicant has responded to all of the points set forth in the Advisory action and has supplied all of the information required by the Advisory action and the information agreed to be supplied during the telephone interview.

Accordingly, it is believed that all of the items have been

resolved and a Notice of Allowance is now appropriate.

If any further fees are required by this communication,
please charge such fees to our Deposit Account No. 16-0820, Order
No. 29865.

Respectfully submitted,

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